

WILBUR MARTIN

IBLA 80-143

Decided May 21, 1980

Appeal from decision of Utah State Office, Bureau of Land Management, declaring Quinnidine 1-8 and Roundy 1-8 lode mining claims abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally --
Federal Land Policy and Management Act of 1976: Assessment Work
-- Federal Land Policy and Management Act of 1976: Recordation of
Affidavit of Assessment Work or Notice of Intention to Hold Mining
Claim -- Federal Land Policy and Management Act of 1976:
Recordation of Mining Claims and Abandonment -- Mining Claims:
Recordation

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim filed for recordation shall be accompanied by a service fee. This is a mandatory requirement, and without payment of the fee, there is no recordation. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 22, 1979, and the filing fee therefore is not paid to BLM until Mar. 10, 1980, the recordation date of the notice is Mar. 10, 1980.

2. Federal Land Policy and Management Act of 1976: Recordation of
Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file such instruments as are required by 43 CFR sections 3833.1 and

3833.2 within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim, and it properly is declared abandoned and void.

APPEARANCES: Mrs. C. W. Martin, wife of appellant, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Wilbur Martin 1/ appeals from a decision of the Utah State Office, Bureau of Land Management (BLM), dated November 9, 1979, declaring the Quinnidine 1-8 and Roundy 1-8 lode mining claims abandoned and void. BLM stated that the filings were unacceptable because they were not accompanied by the required \$5 service fee for each claim to be recorded, as required by 43 CFR 3833.1-2(d).

Appellant located his claims on May 17, 1976, and filed for recordation with BLM on October 22, 1979, under section 314 of the Federal Land Policy and Management Act of October 21, 1976 (FLPMA), 43 U.S.C. § 1744 (1976). In a letter accompanying the documents to be filed, appellant stated that a money order for \$80 was enclosed to cover recording fees. There is nothing in the file to show that BLM received this money. In its decision of November 9, 1979, BLM stated that appellant's filings were unacceptable because they were not accompanied by the \$5 service fee for each claim. BLM cited 43 CFR 3833.4(a), which provides that failure to file within the time period prescribed in 43 CFR 3833.1-3 shall be deemed conclusively to constitute an abandonment of the mining claim and it shall be void. On the basis of these regulations, BLM declared appellant's claims abandoned and void and returned appellant's documents to him.

The thrust of appellant's appeal is contained in the following language in the statement of reasons:

I do not know for what reason the money order did not arrive with the recordings, but it was certainly with all good intent that I mailed the package, thinking with all honesty that everything was contained which was needed. We went to a great deal of trouble obtaining all the necessary information and copies in order to send them, and we certainly did not intentionally leave out the filing fees *
* * on such a crucial thing as this.

Appellant states that he is sending the fee again. A BLM receipt in the case file shows that the fee was paid March 10, 1980.

1/ The decision lists Jay Pratt as a colocator of the claims. Mr. Pratt has not appealed.

[1, 2] 43 CFR 3833.1-2 requires that, for mining claims located on or before October 21, 1976, a copy of the official record of the notice or certificate of location must be recorded with the proper office of BLM within 3 years, or on or before October 22, 1979. 43 CFR 3833.1-2(d) states that each claim or site filed with BLM shall be accompanied by a \$5 service fee. This is a mandatory requirement. Without payment of the filing fee, there is no recordation. Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979); W. Verne Kight, __ IBLA __ (1980); Phyllis Wood, 46 IBLA 309 (1980); Joe B. Cashman, 43 IBLA 239 (1979). Thus as the filing fee for the notices of appellant's claims was not paid until March 10, 1980, it must be held that the date of recordation of these claims with BLM cannot be considered to have occurred earlier than that date. Joe B. Cashman, supra. As this date is after October 22, 1979, appellant has not complied with the time requirement specified by the statute and regulations. Under 43 CFR 3833.4(a), the failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time prescribed, must be deemed conclusively to constitute an abandonment of the mining claim.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Frederick Fishman
Administrative Judge

